

SEP 25 1979 -10 05 AM

No. 9-2684066
SEP 25 1979
INTERSTATE COMMERCE COMMISSION LAW OFFICES
CONNER, MOORE & CORBER1747 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, D. C. 20006

Fee \$ 250.00

ICC Washington, D.C.

ROBERT J. CORBER

INTERSTATE COMMERCE COMMISSION

Ms. Agatha L. Mergenovich
INTERSTATE COMMERCE COMMISSION
Office of the Secretary - Room 2209
Washington, DC 20423

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to former section 20c of the Interstate Commerce Act, 49 U.S.C. §11303, are documents relating to the railroad equipment described and marked in accordance with the attached Schedule A.

1. Security Agreement, Chattel Mortgage and Lease Agreement dated as of September 20, 1979 between Brae Corporation and Citicorp Industrial Credit Inc.
2. Agreement between Brae Corporation and American Grain and Related Industries dated as of July 20, 1979.
3. Railroad Car Lease Agreement between Brae Corporation and American Grain and Related Industries dated as of July 20, 1979.
4. Assignment Agreement between Brae Corporation and States Marine Corporation dated as of August 6, 1979
5. Lease Agreement between Brae Corporation and North Stratford Railroad Corporation dated as of April 21, 1978.

The names and addresses of the parties to the above transactions are as follows:

1. Security Agreement, Chattel Mortgage and Lease Agreement:

a. Lessor--Mortgagor: ^{Top line} Brae Corporation, Three Embarcadero Center, Suite 1760, San Francisco, CA 94111

b. Mortgagee: ^{Bottom line} Citicorp Industrial Credit, Inc. 44 Montgomery Street, San Francisco, CA 94104

2. Agreement between Brae Corporation and American Grain and Related Industries:

SEP 25 1979 -10 05 AM SEP 25 1979 -10 05 AM

INTERSTATE COMMERCE COMMISSION

(202) 833-3500

CABLE ADDRESS: ATOMLAW

10844-125
RECORDATION NO. Filed 1425

SEP 25 1979 -10 05 AM RECORDATION NO. Filed 1425

INTERSTATE COMMERCE COMMISSION SEP 25 1979 -10 05 AM

INTERSTATE COMMERCE COMMISSION

September 24, 1979

- a. Lessor Assignor: Brae Corporation, Three Embarcadero Center - Suite 1760, San Francisco, CA 94111 *Cross index*
- b. Lessee: Warrenton Railroad, Post Office Box 518, Warrenton, NC 27519
- c. Assignee: American Grain and Related Industries, 1501 42nd Street, 2 Corporate Place, West Des Moines, IA 50265
3. Railroad Car Lease Agreement between Brae and American Grain and Related Industries: *✓ g w*
- a. Lessor: Brae Corporation, Three Embarcadero Center - Suite 1760, San Francisco, CA 94111
- b. Lessee: American Grain and Related Industries, 1501 42nd Street, 2 Corporate Place, West Des Moines, IA 50265
4. Assignment Agreement between States Marine Corporation and Brae Corporation: *Cross index*
- a. Assignor: States Marine Corporation, 280 Park Avenue, New York, NY 10017
- b. Assignee: Brae Corporation, Three Embarcadero Center - Suite 1760, San Francisco, CA 94111
- c. Lessee: Genesee and Wyoming Railroad Company, 270 Greenwich Avenue, Greenwich, CT 06830
5. Lease Agreement between North Stratford Corporation and Brae Corporation: *Cross index under*
- a. Lessor: Brae Corporation, Three Embarcadero Center - Suite 1760, San Francisco, CA 94111
- b. Lessee: North Stratford Railroad Corporation, Post Office Box 275, Beecher Falls, VT 05902

Please file and record the enclosed documents. It is requested that they be indexed in accordance with the names of the parties to the transactions stated above. Please index and file under one primary number.

September 24, 1979

Enclosed is a check payable to the Interstate Commerce Commission in the amount of \$250, the prescribed fee for filing and recordation of the enclosed documents.

Please return to the person presenting this letter your letter confirming such filing and recordation, the fee receipt therefor and all copies of the enclosed documents not required for filing.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert J. Corber", written in a cursive style.

Robert J. Corber
Attorney for Brae Corporation.

mbm

Enclosures

SEP 25 1979 - 10 05 AM

RAILROAD CAR LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS RAILROAD CAR LEASE AGREEMENT (the "Lease") dated this 20th day of July, 1979, by and between BRAE Corporation organized in the State of Delaware, with its principal place of business at San Francisco, California (hereinafter referred to as "Lessor"), and American Grain and Related Industries (a Farmer-owned Cooperative), with its principal place of business at Des Moines, Iowa (hereinafter referred to as "Lessee").

RECITAL

Lessor and Lessee have entered into an agreement ("Use Agreement") dated as of July 20 1979 with respect to the railroad cars shown on the Rider to this Lease (hereinafter collectively referred to as the "cars" and separately as a "car"). The Use Agreement provides that, upon the occurrence of certain events, all cars then subject to the Use Agreement shall become immediately subject to this Lease.

WITNESSETH:

In consideration of the mutual terms and conditions herein set forth, the parties hereto agree as follows:

1. Lessor agrees to furnish to Lessee and Lessee agrees to accept and use upon the terms and conditions herein set forth the cars. If prior to the Effective Date (as defined in Paragraph 3A hereof) any of the cars shall have been destroyed and not replaced, the term "cars" as used herein shall exclude such destroyed cars.


2. The term of this Lease with respect to each of the cars shall be the term specified on the Rider to this Lease that is applicable to such car, unless sooner terminated in accordance with Paragraph 24 hereof, subject to any extension thereof as may be agreed upon in writing by Lessor and Lessee.

3. Each of the cars shall be considered as delivered to and accepted by Lessee immediately upon such cars being subject to this Lease upon the occurrence of the events specified in the Use Agreement (hereinafter referred to as the "Effective Date").

4. A. On the Effective Date, each car will be plainly marked on each side with Lessor's identification mark. If during the continuance of this Lease such marking

shall at any time be removed or become illegible, wholly or in part, Lessee shall immediately cause such marking to be restored or replaced at Lessor's expense.

B. Lessee shall not place nor permit any lettering or markings of any kind to be placed upon the cars without Lessor's prior written consent, except that, for the purpose of evidencing the operation of the cars in Lessee's service hereunder, Lessee shall be permitted to board, placard or stencil the cars with letters not to exceed two inches (2") in height.

 ^{and liability,} C. Lessor may from time to time, at its expense ^{AK} cause the cars to be marked clearly and conspicuously to show the interest of any secured party or of any assignee of Lessor or any secured party in the cars.

5. The fixed rental with respect to each of the cars shall be the rental specified on the Rider to this Lease, and such fixed rental shall become effective with respect to each of the cars covered by such Rider upon the Effective Date and shall continue in effect with respect to such car throughout the term of this Lease with respect to such car unless such car is redelivered to Lessor at an earlier date, as provided in Paragraph 25 hereof. Payment of said fixed rental shall be made in advance. The first fixed rental payment for each car shall be made at the pro rata daily rate for the number of days from the Effective Date to the end of the month in which the Effective Date falls. All subsequent payments of fixed rental shall be made on or before the first day of each succeeding month of the term of this Lease. The last payment of rental shall cover the number of days from the first day of the final month to the termination date of this Lease at the pro rata daily rate.

6. Immediately after the end of each year of this Lease, Lessor shall determine the total number of miles that each car traveled during such year, loaded and empty. If it is determined that any car traveled more than 30,000 miles during such year, Lessee agrees to pay Lessor as additional rent for such car for such year, the sum of \$.02 multiplied by the number of miles in excess of 30,000 that such car traveled during such year. The determination of the total number of miles traveled by each car during any year shall be made by multiplying the total number of miles that such car traveled while loaded during such year by 2, unless Lessor has in its possession information sufficient to ascertain more precisely the total mileage traveled by such car. Any mileage accrued prior to the Effective Date shall not be considered in making this computation but the excess mileage for any partial year shall be computed by pro-rating 30,000 miles over such partial year.

7. A. Lessee agrees to report ^{monthly} ~~promptly~~ to Lessor each movement of the cars. Such report shall contain the date, car number, destination, and routing of such movement and any other information which Lessee receives from railroad or other sources concerning such movement. Lessor agrees to use such reports and any other information which is received by Lessor to maintain records to be used to collect any mileage allowances, rental, and/or other compensation payable by railroads by reason of the use of the cars (hereinafter referred to as "allowances").

B. Insofar as applicable laws and regulations permit, Lessee, unless an event of default specified in Paragraph 24 hereof shall have occurred and be continuing, shall be entitled to all allowances collected by Lessor from railroads as a credit against fixed rents, and any other amounts that Lessee may be required to pay Lessor, but in ~~an~~ ^{no} event shall such credit exceed the sum of such obligations.

8. Lessee agrees, insofar as possible, so to use the cars that their total mileage under load will equal or exceed their mileage empty on each railroad over which the cars move. In the event that the empty mileage of the cars should exceed their loaded mileage on any railroad and Lessor is notified by such railroad to equalize such mileage with loaded mileage or to pay for such excess empty mileage, Lessee after notice from Lessor, shall equalize such excess ~~empty~~ ^{empty} mileage within the time limit established by such railroad or pay Lessor for such excess at the rate established by the governing tariff.

9. Lessee shall use the cars with due care and in services which will not damage the cars as the result of the products being transported and Lessee will not alter the physical structure of any of the cars without the approval in writing of Lessor. Lessee agrees to give Lessor prompt written notice of the need to repair or perform maintenance upon any car.

10. A. Except where responsibility is placed upon others as provided in Paragraphs 10C or 12A hereof, Lessor, at its expense, agrees to maintain the cars in good condition and repair according to the Code of Rules (as defined in Paragraph 12A).

B. Lessor's obligation under Paragraph 10A to maintain and repair the cars shall not extend to mandatory changes in the design of any car, its components, configurations or safety appliances or other changes required by separate legislative act or regulation effective after the Effective Date which would require an expenditure in excess of \$2,000. In the event of such a change applicable to any car, Lessor

may terminate this Lease with respect to such car, provided, however, that prior to termination, Lessee may, at its own expense, cause to have made the mandatory changes to such car or cars, and the lease shall continue until expiration.

C. Lessor's maintenance obligations shall not extend to repair or maintenance required as a result of, or attributable to: (i) defects in the manufacture or workmanship of any car or any component thereof or any material incorporated therein by the manufacturer or by any person other than the Lessor, its agents or representatives; provided that Lessor shall use its best efforts to enforce the warranty rights with respect to the cars; (ii) damage caused by Lessee, its agents or representatives; (iii) damage caused to the car by any corrosive or abrasive substance loaded therein or used in connection therewith; (iv) damage to substance loaded therein or used in connection therewith or damage to any car caused by open flames, vibrations, sledges or other similar devices during loading or unloading; (v) excessive or unbalanced loading; and (vi) special interior linings. Lessee agrees, at its expense, to maintain all special interior linings on the cars in good condition and repair. Lessor shall forward to Lessee any bills for repairs to the cars made by railroads for reasons described in Paragraph 10C and Lessee shall promptly pay such bills.

11. A. If any car becomes unfit for any reason unrelated to the matters described in Paragraph 10C hereof and if such condition is not due to damage to such car for which Lessee is responsible under this Lease, the provisions of Paragraph 11B shall govern the abatement of rental for such car.

B. Fixed rent for any car damaged or destroyed for any reason unrelated to the matters described in Paragraph 10C shall abate from the fifth day after the date when such car is repaired and returned to service or replaced by another car. Lessor may elect to terminate this Lease with respect to any car which has suffered damage in excess of 25% of its then fair market value or any car for which the cost of repairs exceeds the available insurance proceeds. In the event this Lease is terminated with respect to any car, Lessor may at its election substitute for such car another car of ~~approximately the same age and type~~. Lessor shall have the right, but shall not be obligated to substitute for any car which shall be so damaged or destroyed another car of a similar ~~type, capacity and condition~~.

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
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RPK

12. Responsibility for loss or destruction of or damage to cars or parts thereof or appurtenances thereto furnished under this Lease shall be as fixed by the then prevailing Code of Rules Governing the Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic promulgated by the Association of American Railroads (the "Code of Rules"). The Code of Rules shall establish the rights, obligations, liabilities of Lessor, Lessee, and any railroad subscribing to the Code of Rules and moving the cars over its lines in respect of matters to which the Code of Rules relate. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested but without affecting their respective obligations under this Article to establish proper claims against parties responsible for loss, or destruction of or damage to the cars.

13. Except where responsibility is placed on others, as provided in Paragraph 12A hereof, Lessee agrees to indemnify and save harmless Lessor from and against all losses, damages, injuries, liabilities, claims, and demands whatsoever, regardless of the cause thereof, any expenses in connection therewith, ~~including counsel fees arising out of~~, or as a result of, the use and/or operation of the Cars during the term of this Lease; *provided, however, that counsel fees incurred herewith shall be paid only to the prevailing party.*  



14. Lessor shall not be liable for any loss of, or damage to, commodities or any part thereof, loaded or shipped in the cars, however such loss or damage shall be caused or shall result. Lessee agrees to assume responsibility for, to indemnify Lessor against, and to save them harmless from any such loss or damage or claim therefore, and to assume responsibility for any damage caused to the car by such commodities.

15. Neither Lessor nor the manufacturer of the cars shall have any liability to Lessee for loss of use of car or cars, in whole or in part, regardless of the cause thereof except if the result of the gross negligence or willful misconduct of Lessor. EXCEPT AS PROVIDED IN PARAGRAPH 10, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CARS.

16. Lessor agrees to assume responsibility for and to pay all property taxes levied upon the cars and to file all property tax reports relating thereto.



17. Lessor will not be responsible for the payment of any sales and/or use taxes or similar taxes, tariff, duty, customs, switching demurrage, or other charges made by any governmental, railroad, or other agency in respect of any of the cars except as specifically provided herein; and Lessee agrees to reimburse Lessor for any such charges.

18. In connection with a financing transaction all rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of (in all cases as security), either in whole or in part, and/or Lessor may assign, pledge, mortgage, transfer, or otherwise dispose of title to the cars with or without notice to Lessee. In the event of any such assignment, pledge, mortgage, transfer or other disposition, this Lease and all of the Lessee's rights under this Lease and all rights of any person, firms, or corporation who claims or who may hereafter claim any rights under this Lease under or through Lessee are hereby made subject and subordinate to the terms, covenants, and conditions of any chattel mortgages, conditional sale agreements, and assignments and/or equipment trust agreements covering the cars or any of them heretofore or hereafter created and entered into by Lessor, its successors, or assigns and to all of the rights of any such chattel mortgage^e, assignee, trustee, or other holder of the legal title to the cars. In no event shall the holder of a security interest in the cars be liable to Lessee for any matter arising out of such security interest.



19. A. Lessee agrees to use the cars predominantly within the boundries of the continental United States. Lessee agrees that if any of the cars are placed in international service by Lessee, Lessee shall reimburse Lessor for any customs, duties, taxes or other expenses resulting from such use.

B. Lessee shall make no transfer, sublease or assignment of this Lease or any car (by operation of law ~~or~~^{or} otherwise) without the prior written consent of Lessor; provided that Lessee is hereby expressly permitted to sublease the cars to members of American Grain and Related Industries. Lessee agrees (i) that no sublease shall permit use of the cars predominantly outside of the continental United States, (ii) that no sublessee shall be a tax-exempt organization or governmental unit and (iii) that all subleases shall be expressly subordinate as provided in Paragraph 18. No sublease shall in any way relieve Lessee from its obligations to Lessor under this Lease. Lessee shall notify Lessor in the event of a sublease.



20. Lessee acknowledges and agrees that by the execution hereof it does not obtain and, by payments and performance hereunder it does not and will not have or obtain any title to the cars or any of them at any time subject to this Lease nor any property right or interest legal or equitable therein, except solely as Lessee hereunder and subject to all of the terms hereof. Lessee shall keep the cars free from any encumbrances or liens which may be a cloud upon or otherwise affect Lessor's title.

21. A. At the time of delivery of the cars ~~to~~ by Lessor to Lessee, the cars will conform to the applicable specifications and to all of the governmental laws, regulations, requirements and rules, and to all of the standards recommended by the Association of American Railroads interpreted as being applicable to railroad equipment of the character of the cars as of the date of delivery to Lessee. Lessee agrees to comply with all governmental laws, regulations, requirements and rules, and with the Code of Rules with respect to the use and operation of each of the cars during the term of this Lease.

~~22. Lessee agrees to furnish Lessor promptly, at Lessor's request with complete and accurate information reasonably required for the efficient administration of this Lease.~~

23. Lessor or its assignee shall have the right by its authorized representatives to inspect the cars at the sole cost and expense of Lessor at such times as shall be deemed necessary.

24. A. The occurrence of any of the following shall constitute an Event of Default:

(i) the failure by Lessee to make any payment of fixed or additional rent or other amount required to be paid by Lessee under this Lease within ten days after the date such payment is due;

(ii) any breach by Lessee of any agreement or covenant contained in this Lease, which is not cured within 20 days after notice thereof from Lessor to Lessee;

(iii) any act of insolvency by Lessee or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors;

(iv) the filing of an involuntary petition under any bankruptcy, reorganization, insolvency or moratorium laws against Lessee that is not dismissed within 45 days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within 45 days from the date of such filing or appointment; or

(v) any attempt by Lessee, in violation of this Lease, to assign, sublease or transfer this Lease or any interest in or the right to use or possession of the cars.

B. Upon the occurrence of any Event of Default, Lessor may, at its option:

(i) proceed by appropriate court action or actions either at law or in equity to enforce specific performance by Lessee of this Lease and/or to recover damages for breach hereof; or

(ii) terminate this Lease, whereupon all rights of Lessee to the use of the cars shall absolutely cease and terminate as though this Lease had never been made, and all fixed rent not theretofore due and payable with respect to the cars shall forthwith become due and payable.

Any proceeds to Lessor from reletting the cars shall be applied first to the expenses incurred in reletting the cars (including, but not limited to, all costs of repossession and delivery of the cars to the new lessee) and then in payment of the amounts due Lessor under this Lease.

Upon the occurrence of an Event of Default, Lessor may exercise its remedies with respect to some or all of the cars. Lessee shall be liable for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any car. The remedies provided in this Lease in favor of Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies existing in law or in equity. To the extent permitted by applicable law, Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided.

25. At the termination of this Lease, Lessee, at its expense, shall return each of the cars and each part thereof to Lessor at the point specified in the Rider, or to such point or points as may be mutually agreed upon by Lessor and Lessee, on the date on which the term of this Lease expires, empty, free from residue, and in the same good order and condition as it was delivered by Lessor to Lessee, ordinary wear and tear and repairs that Lessor is required to make pursuant to Paragraph 10 hereof excepted. Lessee, on demand, shall reimburse Lessor for the cost of cleaning any cars that contain residue. Lessee, at its option, may redeliver any or all of the cars to Lessor during the thirty (30) calendar day period immediately preceding the date on which the term of this Lease or applicable Rider expires. If Lessee shall elect so to

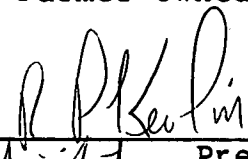
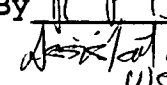
redeliver any or all the cars, the rental on such cars shall cease on the date on which such cars are so redelivered to Lessor. In the event that any or all of the cars are not redelivered to Lessor on or before the date on which the term of this Lease expires, all of the obligations of Lessee under this Lease with respect to such cars shall remain in full force and effect until such cars are redelivered to Lessor; provided, however, that the daily rental for each of such cars during such period shall be one and one-half times the pro rata daily rate of the rental specified in the Rider.

26. Any controversy or claims arising out of, or relating to, this agreement, or the breach hereof, shall be settled in Des Moines, Iowa, by arbitration in accordance with the rules then promulgated by the American Arbitration Association, and a judgment upon the award rendered may be entered in any court having jurisdiction there.

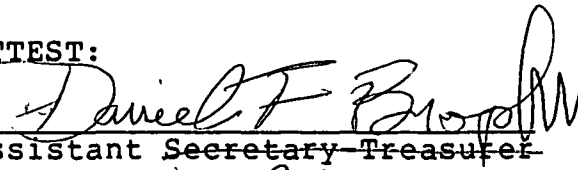
27. This agreement and the provisions herein shall be interpreted under, and performance shall be governed by, the laws of the State of Iowa.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered as of the day and year first above written.

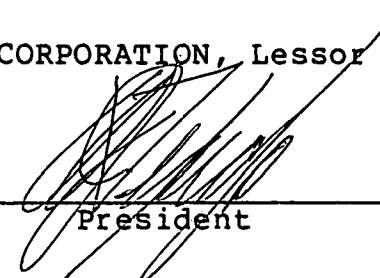
AMERICAN GRAIN AND RELATED INDUSTRIES
(a Farmer-owned Cooperative), Lessee

By  President
 Vice


ATTEST:


Assistant Secretary-Treasurer
Vice-President

BRAE CORPORATION, Lessor

By  President

ATTEST:


Assistant Secretary

RIDER

This Rider shall be attached to and forms a part of the Railroad Car Lease Agreement dated July 20, 1979, by and between American Grain and Related Industries (a Farmer-owned Cooperative) and Brae Corporation.

<u>Quantity</u>	<u>Description</u>	<u>Capacity, Each</u>	<u>Fixed Rental, Each</u>
100	Covered Hoppers	4650 Cubic Feet	\$494 per month

With respect to the cars covered by this Rider, it is hereby agreed that:

This Railroad Car Lease Agreement shall become effective upon the Effective Date and shall expire upon the then scheduled expiration date listed in Paragraph 4 of the Use Agreement referred to in the recital to the Lease. At the time of delivery, Lessor and Lessee agree to execute Rider No. Two to this Railroad Car Lease Agreement which shall include the exact dates of the term of this Lease.

The redelivery point for the cars pursuant to Paragraph 25 of the Lease is Des Moines, Iowa.

All other terms and conditions of the Lease shall remain unchanged.

Executed this 20th day of July 1979, by the duly authorized representatives of the parties hereto.

AMERICAN GRAIN AND RELATED INDUSTRIES
(a Farmer-owned Cooperative), Lessee

By R. P. Kerlin
Assistant Vice President

ATTEST:

Daniel F. Bragg
Assistant Secretary-Treasurer
Vice-President

BRAE CORPORATION, Lessor

By [Signature]

ATTEST:

[Signature]
Assistant Secretary

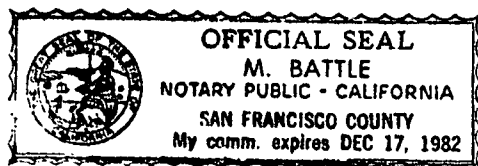
STATE OF Iowa)
COUNTY OF Polk)

On this 20th day of July, 1979, before me personally appeared R.P. Keutten, to me personally known, who being by me duly sworn says that such person is Assistant Vice-President of AMERICAN GRAIN AND RELATED INDUSTRIES (a Farmer-owned Cooperative), and that the foregoing Railroad Car Lease Agreement, Rider(s) No. and Equipment Schedule(s) No. were signed on behalf of said entity with due authorization and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such entity.

John A. Rosman
Notary Public

STATE OF CALIFORNIA)
CITY AND COUNTY OF SAN FRANCISCO)

On this 7th day of August, 1979, before me personally appeared W.G. Tivido, to me personally known, who being by me duly sworn says that such person is President of BRAE CORPORATION, and that the foregoing Railroad Car Lease Agreement, Rider(s) No. and Equipment Schedule(s) No. were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.



M. Battle
Notary Public